

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

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This issue contains

T.D. 80-119 through 80-122

C.A.D. 1245 and 1246

Protest abstracts P80/60 through P80/62

Reap. abstracts R80/116 through R80/126

International Trade Commission Notice

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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U.S. Customs Service

Treasury Decisions

(T.D. 80-119)

Reimbursable Services—Excess Cost of Preclearance Operation

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 1, 1980.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with pay period beginning May 18, 1980.

<i>Installation:</i>	<i>Biweekly excess cost</i>
Montreal, Canada.....	\$17,961
Toronto, Canada.....	34,727
Kindley Field, Bermuda.....	5,936
Nassau, Bahama Islands.....	17,350
Vancouver, Canada.....	10,674
Winnipeg, Canada.....	1,993
Freeport, Bahama Islands.....	13,517
Calgary, Canada.....	6,537
Edmonton, Canada.....	4,857

MITCHELL A. LEVIN
(For Jack T. Lacy Comptroller).

(T.D. 80-120)

Customhouse Broker License—Suspension

Suspension with prejudice of customhouse broker license, No. 5115

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

Notice is hereby given that the Commissioner of Customs on March 19, 1980, pursuant to section 641, Tariff Act of 1930, as

amended (19 U.S.C. 1641), and part 111 of the Customs Regulations, as amended, and upon the specific request of Customhouse broker Christopher Baretela, Elmont, N.Y., in response to the notice to show cause and statement of charges against him dated October 17, 1979, suspended with prejudice for a period of 3 weeks individual Customhouse broker's license, No. 5115 issued to him January 27, 1975 for Customs District of New York N.Y. The Commissioner's decision is effective as of May 19, 1980.

Dated: March 19, 1980.

ROBERT E. CHASEN,
Commissioner of Customs.

(T.D. 80-121)

Bonds

Approval and discontinuance of bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: May 2, 1980.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Alpha-Omega Services, Inc., 16220 Gundry Ave., Paramount, CA; St. Paul Fire & Marine Ins. Co.	Mar. 24, 1980	Mar. 25, 1980	New Orleans, LA; \$10,000
Alumina Partners of Jamaica, 100 West 10th St., Wilmington, DE; Nat'l Union Fire Insurance Company of Pittsburgh, PA; (PB 12/8/76) D 2/12/80 ¹	Jan. 15, 1980	Feb. 26, 1980	New Orleans, LA; \$10,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
American Oceanic Shipping Corp., 50 Broad St., New York, NY; Old Republic Ins. Co.	Mar. 20, 1980	Mar. 21, 1980	New York Seaport; \$10,000
Caribe Shipping Co., Inc., P.O. Box 3267, San Juan, PR; Antilles Ins. Co. (PB 10/14/71) D 1/28/80 ²	Jan. 28, 1980	Jan. 29, 1980	San Juan, PR; \$10,000
Clou Containers Inc., 17 Battery Place, New York, NY; Old Republic Ins. Co.	Mar. 17, 1980	Mar. 18, 1980	New York Seaport; \$10,000
Contract Marine Carriers Inc., 1201 Corbin St., Port Elizabeth, NJ; American Motorists Ins. Co. D 3/3/80	Feb. 2, 1979	Feb. 7, 1979	New York Seaport; \$10,000
Contract Marine Carriers Inc., 23 Broad St., Charles- ton, SC; American Manufacturers Mutual Ins. Co.	Jan. 31, 1980	Feb. 1, 1980	Charleston, SC; \$10,000
Contrans (USA) Inc., Agents for Contrans GMBH, 7 Hanover Square, New York, NY; Hartford Acci- dent & Indemnity	Jan. 25, 1980	Feb. 8, 1980	New York Seaport; \$10,000
Del Monte Corp., One Market Plaza, San Francisco, CA; American Home Assurance Co. (PB 4/1/74) D 4/1/80 ²	Apr. 1, 1980	Apr. 1, 1980	Buffalo, NY; \$10,000
East Coast Overseas Corp., 80 Broad St., New York, NY; St. Paul Fire & Marine Ins. Co. D 3/4/80	May 2, 1987	May 4, 1987	New York Seaport; \$10,000
Gulf & Eastern Steamship & Chartering Corp., 1226 ITM Bldg., New Orleans, LA; St. Paul Fire & Ma- rine Ins. Co.	Apr. 22, 1980	Apr. 22, 1980	New Orleans, LA; \$10,000
Intercontinental Fibres Inc., 350 Fifth Ave., New York, NY; St. Paul Fire & Marine Ins. Co. D 1/30/80	Oct. 19, 1970	Oct. 20, 1970	New York Seaport; \$30,000
International Gulf Chartering, Inc., 716 Cotton Exchange Bldg., Houston, TX; St. Paul Fire & Marine Ins. Co.	Mar. 4, 1980	Mar. 19, 1980	Houston, TX; \$50,000
Kanga Exporting Co., 2165 Lake Dr., P.O. Box 3812, Cocoa, FL; U.S. Fidelity & Deposit Co.	Jan. 22, 1980	Mar. 3, 1980	Tampa, FL; \$10,000
Logan Steamship Agency, Inc., 250 N. Water St., P.O. Box 2281, Mobile, AL; St. Paul Fire & Marine Ins. Co.	Apr. 9, 1980	Apr. 10, 1980	Mobile, AL; \$10,000
McDonnell Douglas Canada Ltd., P.O. Box 6013, Toronto AMF, Ontario, Canada; Safeco Insurance Company of America (PB 1/26/71) D 4/2/80 ⁴	Jan. 26, 1980	Mar. 10, 1980	Detroit, MI; \$10,000
Nissho-Iwai American Corp., 80 Pine St., New York, NY; The Travelers Indemnity D 2/4/80	Mar. 2, 1970	Mar. 9, 1970	New York Seaport; \$10,000
Philipp Brothers Chemicals Inc., 10 Columbus Circle, New York, NY; American Motorists Insurance Co.	Feb. 7, 1980	Feb. 7, 1980	New York Seaport; \$10,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
The Puerto Rico Maritime Shipping Authority (a PR Corp.) and its subsidiaries International Marine Management Inc., and Puerto Rico Marine Management Inc. (both DE Corps.), GPO Box 71105, San Juan, PR; American Motorists Insurance Co.	Mar. 29, 1980	Mar. 31, 1980	New York Seaport; \$10,000
Reiters Beer Distributors, Inc., 67 Jay St., Brooklyn, NY; American Motorists Ins. Co. D 4/14/80	May 12, 1976	Apr. 30, 1976	New York Seaport; \$10,000
Special Shipping, Inc., Suite 500, 609 Fannin Bldg., Houston, TX; Ohio Casualty Ins. Co.	Jan. 10, 1980	Jan. 20, 1980	Houston, TX; \$10,000
Stauffer Chemical Co., Exit 18, Sherwood Island, Westport, CT; Federal Ins. Co. (PB 4/24/73) D 4/24/80 ¹	Apr. 24, 1980	Mar. 4, 1980	New York Seaport; \$10,000
Uniroyal Inc., Middlebury, CT; American Home Assurance Co. (PB 4/15/74) D 4/15/80 ²	Mar. 10, 1980	Mar. 31, 1980	New York Seaport; \$10,000
Wheaton Van Lines, Inc., 2525 E. 56th St., Indianapolis, IN; Commercial Union Ins. Co. D 3/4/80	Mar. 4, 1980	Mar. 8, 1980	New York Seaport; \$10,000

¹ Surety is Insurance Co. of North America.

² Surety is Puerto Rican-American Insurance Co.

³ Surety is Peerless Insurance Co.

⁴ Principal is Douglas Aircraft Co. of Canada Ltd.; Surety is Federal Insurance Co.

⁵ Surety is Peerless Insurance Co.

⁶ Surety is Federal Insurance Co.

BON-3-10

ALFRED G. SCHOLLE,

Director,

Carriers, Drawback and Bonds Division.

(T.D. 80-122)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued July 6, 1979, to March 28, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the

basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

Dated: May 2, 1980.

ALFRED G. SCHOLLE,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Arizona Chemical Co.

Articles: Polyterpene resins.

Merchandise: D'Limonene.

Factory: Panama City, Fla.

Statement signed: May 29, 1979.

Basis of claim: Used in, less valuable waste.

Rate forwarded to Regional Commissioner of Customs: New York,
February 14, 1980.

(B) Company: Bataco Industries, Inc.

Articles: Barbed tape concertina.

Merchandise: Hot dipped galvanized steel sheet.

Factory: Miami, Fla.

Statement signed: September 14, 1979.

Basis of claim: Used in, less valuable waste.

Rate forwarded to Regional Commissioner of Customs: Miami,
March 5, 1980.

Revokes: T.D. 77-292-C.

(C) Company: Bunte Candies, Inc.

Articles: Candy products.

Merchandise: Hard refined sugar.

Factories: Oklahoma City, Okla. (2).

Statement signed: December 4, 1979.

Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: New York,
March 3, 1980.

(D) Company: Chelsea Industries Inc.

Articles: Combined finished upper materials and finished bindings.

Merchandise: Greige cotton piece goods and dyed cotton piece goods.

Factory: Chelsea, Mass.

Statement signed: January 4, 1980.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: Boston,
February 22, 1980.

(E) Company: Chemplast, Inc.

Articles: Polytetrafluoroethylene (PTFE) rods, sheets, tapes, tubes in finished and semifinished form; machined and fabricated laboratory ware of PTFE.

Merchandise: Polytetrafluoroethylene (PTFE) powder.

Factories: Wayne, Hawthorne, Clark, and Cranford, N.J.; Acton, Mass.; Van Nuys, Calif.

Statement signed: January 23, 1980.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York, February 20, 1980.

(F) Company: Cranston Print Works Co.

Articles: Bleached, dyed, and/or printed piece goods.

Merchandise: Greige piece goods.

Factories: Cranston, R.I.; Webster, Mass.; Fletcher, N.C.

Statement signed: September 21, 1978.

Basis of claim: Used in, less valuable waste.

Rate forwarded to Regional Commissioner of Customs: New York, February 14, 1980.

Revokes: T.D. 55502-D.

(G) Company: Crest Steel Corp.

Articles: Steel in plate or shapes.

Merchandise: Hot rolled steel coil.

Factory: Carson, Calif.

Statement signed: June 29, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: Los Angeles, January 22, 1980.

(H) Company: Dana Corp.

Articles: Automotive gear frames (frames) and parts thereof.

Merchandise: Siderail members, cross members, and hot rolled steel sheet/strip.

Factories: Ecorse, Mich.; Reading, Pa.

Statement signed: September 10, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York, February 5, 1980.

(I) Company: Data General Corp.

Articles: Computer systems; computer subsystems; peripheral computer equipment.

Merchandise: Printed circuit board products.

Factories: Southboro, Mass.; Westbrook, Maine; Cary, N.C.; Portsmouth, N.H.; Austin, Tex.

Statement signed: January 29, 1980.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: San Francisco, February 22, 1980.

Revokes: T.D. 80-62-G.

(J) Company: E. I. du Pont de Nemours & Co.

Articles: Du Pont TEL aviation antiknock and du Pont TEL motor mix antiknock.

Merchandise: Motor mix ISF.

Factory: Deepwater, N.J.

Statement signed: December 10, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: Baltimore, January 25, 1980.

Revokes: T.D. 77-102-E.

(K) Company: Ethyl Corp.

Articles: 2-methyl-6-ethyl aniline (MEA).

Merchandise: Ortho toluidine.

Factory: Pasadena, Tex.

Statement signed: January 29, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New Orleans, February 25, 1980.

(L) Company: Fedders Corp.

Articles: Refrigerating, heating and air-conditioning systems, sub-assemblies and components, room air-conditioners, and automotive radiators.

Merchandise: Copper tubing; stainless steel sheet, strip or coil; brass sheet or coil; aluminized steel sheet, strip or coil; galvanized steel sheets in coil and cut lengths; cold rolled carbon steel, coiled and flat; hot rolled carbon steel flat sheet; aluminum sheets and coils; brass tubing; copper strip; and brass strip.

Factories: Edison, N.J., Effingham, Ill., Buffalo, N.Y. (2).

Statement signed: June 1, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York, February 28, 1980.

(M) Company: The Kendall Co.

Articles: Bleached and/or dyed and/or mercerized piece goods.

Merchandise: Piece goods.

Factory: Bethune, S.C.

Statement signed: August 30, 1979.

Basis of claim: Used in, less valuable waste.

Rate forwarded to Regional Commissioner of Customs: New York,
February 6, 1980.

(N) Company: Koehring Co.

Articles: Lattice-boom cranes, hydraulic cranes, hydraulic excavators,
vibratory compactors, soil stabilizers, water well drilling equipment,
trenchers, farm equipment, and parts thereof.

Merchandise: Steel plate and steel sheet.

Factories: Various factories as listed in manufacturer's statement.

Statement signed: October 12, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: Chicago,
March 28, 1980.

Revokes: Unpublished authorization letter dated August 14, 1979.

(O) Company: Lubrizol Corp.

Articles: Intermediate lubricant additive and finished lubricant ad-
ditives.

Merchandise: Ester amide.

Factories: Painesville, Ohio; Houston and Pasadena, Tex.

Statement signed: July 2, 1979.

Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: Chicago,
February 25, 1980.

(P) Company: Nabisco Confections, Inc.

Articles: Confectionery items.

Merchandise: Hard refined and liquid sugar.

Factories: Cambridge and Mansfield, Mass.; Los Angeles, Calif.

Statement signed: June 15, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York,
March 5, 1980.

(Q) Company: Pepsi-Cola and National Brand Beverages Ltd.

Articles: Canned and bottled carbonated and noncarbonated
beverages.

Merchandise: Pepsi-Cola syrups, flavoring syrups, and concentrates;
hard refined sugar; liquid refined sugar; liquid refined invert sugar.

Factory: Paterson, N.J.

Statement signed: March 13, 1979.

Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: New York,
July 6, 1979.

(R) Company: The Procter & Gamble Manufacturing Co.

Articles: Synthetic detergents.

Merchandise: Alkyl benzene.

Factories: Quincy, Mass.; Staten Island, N.Y.; Baltimore, Md.;
Augusta, Ga.; Cincinnati, Ohio; Chicago, Ill.; Sacramento and Long
Beach, Calif.; Alexandria, La.; Dallas, Tex.; Kansas City, Kans.;
St. Louis, Mo.

Statement signed: September 14, 1979.

Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: Boston,
March 11, 1980.

(S) Company: Reading Alloys, Inc.

Articles: Ferrovanadium carbide nitrogen.

Merchandise: Fused flaked vanadium pentoxide.

Factory: Robeson, Pa.

Statement signed: February 19, 1980.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: Baltimore,
February 28, 1980.

(T) Company: The S. W. Shattuck Chemical Co., Inc.

Articles: Molybdc oxide, technical or chemical grade; other molybdc
products.

Merchandise: Molybdenum concentrates; ammonium molybdate;
molybdenum bearing spent catalyst.

Factory: Denver, Colo.

Statement signed: October 5, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York,
February 12, 1980.

Revokes: T.D. 73-124-J and T.D. 76-319-J.

(U) Company: Spartan Mills.

Articles: Piece goods—bleached, mercerized, finished, dyed.

Merchandise: Greige piece goods.

Factories: Gaffney and Startex, S.C.; Dover, Ga.

Statement signed: August 28, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioners of Customs: Baltimore, Boston, and Miami, March 7, 1980.

(V) Company: Texas Citrus Exchange.

Articles: Canned grapefruit juice, frozen concentrated grapefruit juice, and concentrated grapefruit juice that meets customer specifications.

Merchandise: Concentrated grapefruit juice for manufacturing.

Factories: Mission and Harlingen, Tex.

Statement signed: December 18, 1979.

Basis of claim: Used in.

Rate forwarded to Regional Commissioners of Customs: Houston and Los Angeles, January 28, 1980.

(W) Company: Western Bottling Co., Inc.

Articles: Still and carbonated beverages.

Merchandise: Liquid invert refined sugar.

Factory: Spokane, Wash.

Statement signed: January 28, 1980.

Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: San Francisco, February 20, 1980.

(X) Company: Will-Flow Corp.

Articles: Stainless steel tanks of various types and parts thereof.

Merchandise: Cold rolled stainless steel sheet.

Factory: Charlevoix, Mich.

Statement signed: November 19, 1979.

Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: New York, February 15, 1980.

(Y) Company: Wilmington Finishing Co.

Articles: Bleached and/or dyed piece goods.

Merchandise: Piece goods.

Factory: Wilmington, Del.

Statement signed: November 12, 1979.

Basis of claim: Used in, less valuable waste.

Rate forwarded to Regional Commissioner of Customs: New York, March 11, 1980.

(Z) Company: World Citrus, Inc.

Articles: Orange juice from concentrate.

Merchandise: Concentrated orange juice for manufacturing and frozen concentrated orange juice.

Factory: Winston-Salem, N.C.

Statement signed: January 7, 1980.

Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: Miami, February 12, 1980.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1245)

GENERAL ELECTRIC COMPANY *v.* THE UNITED STATES, No. 79-39

1. CLASSIFICATION OF IMPORTS—CLOCK RADIOS—TSUS ITEM 685.23

Judgment of Customs Court sustaining classification of clock radios as "solid-state (tubeless) radio receivers" under item 685.23 is affirmed.

2. *Id.*—"WHETHER OR NOT" LANGUAGE

"Whether or not" language in superior heading applicable to items 685.10 through 685.50 is essentially qualifying language implicitly invasive of all the subordinate indented provisions.

3. *Id.*

"Whether or not" language is distinguishable in principle from a "parts" provision in the superior heading.

4. *Id.*—COMBINATION ARTICLE

Combination articles covered by item 685.50 are not those created by incorporating a clock in an article such as a radio.

U.S. Court of Customs and Patent Appeals, May 1, 1980

Appeal from U.S. Customs Court, C.D. 4822

[Affirmed.]

Louis Schneider and *Herbert Peter Larsen* attorneys of record for appellant.

Alice Daniel, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation.

[Oral argument on April 10, 1980 by *Herbert Peter Larsen* for appellant, and *Joseph I. Liebman* for appellee.]

Before *MARKEY*, Chief Judge, *RICH*, *BALDWIN*, and *MILLER*, Associate Judges, and *FORD*, Judge.¹

BALDWIN, Judge.

[1] This appeal is from the judgment of the U.S. Customs

¹ Hon. Morgan Ford, U.S. Customs Court, sitting by designation.

Court, 83 Cust. Ct., C.D. 4822, 476 F. Supp. 1082 (1979), sustaining the classification of imported merchandise by the U.S. Customs Service under item 685.23, Tariff Schedules of the United States (TSUS). We affirm.

The merchandise, entered from Taiwan in 1971, consists of clock radios comprising solid-state (tubeless) radio receivers in combination with clock movements and dials, and was classified as "solid-state (tubeless) radio receivers" under item 685.23. Appellant urges that the clock radios are combination articles classifiable under item 685.50 for "other."

The relevant portions of the TSUS, as modified by Presidential Proclamation 3822, T.D. 68-9, are as follows:

SCHEDULE 6.—METALS AND METAL PRODUCTS
PART 5.—ELECTRICAL MACHINERY AND EQUIPMENT

Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all of the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:

	* * * * *	
	Other:	
685.23	Solid-state (tubeless) radio receivers-----	10.4% ad val.
	* * * * *	
	Other:	
	* * * * *	
685.50	Other-----	9% ad val.

Additionally the clock movements and dials were constructively separated from the remainder of the merchandise and separately assessed under item 720.02, pursuant to schedule 7, part 2, subpart E, headnote 5, which reads in relevant part:

5. *Combination articles containing watch or clock movements.*—A watch or clock movement (and its dial, if any) in a combination article is classifiable under the provision applicable to such combination article, but, in determining the duties on the combination article, the movement (and its dial, if any) shall be constructively separated therefrom and assessed with the same rate as would have applied if it had been imported separately.

Appellant does not contest the separate assessment on the clock movements and dials under item 720.02. The parties agreed there was no justiciable issue over any material fact, and cross-moved for summary judgment. The Customs Court granted the motion for the United States and denied appellant's cross-motion, thus sustaining the classification of the subject merchandise under item 685.23.

After a thorough consideration of the record, briefs, and oral argument, we conclude that there is no reversible error in the decision and opinion of Judge Newman and adopt it as our own.

[2] We agree with the reasoning of Judge Newman that the phrase "whether or not incorporating clocks or other timing apparatus" contained in the superior heading applicable to items 685.10 through 685.50 is essentially qualifying language implicitly invasive of all the subordinate indented provisions by virtue of the immediate antecedent language "all of the foregoing, and any combination thereof."

[3] We further agree that the "whether or not" language is distinguishable in principle from the "parts" provision in the superior heading considered by this court in *United States v. Paul M. W. Bruckmann*, 65 CCPA 90, C.A.D. 1211, 582 F. 2d 622 (1978), and that *Bruckmann* did not overrule the case of *Montgomery Ward & Co., Inc. v. United States*, 74 Cust. Ct. 125, C.D. 4596 (1975). [4] Judge Newman has correctly noted that the combination articles covered by item 685.50 are not those created by incorporating a clock or other timing apparatus in an article such as a radio, but rather are those created by a combination of some of the articles mentioned in the superior heading antecedent to the phrase "and any combination thereof, whether or not incorporating clocks or other timing apparatus."

The decision and judgment of the Customs Court is *affirmed*.

(C.A.D. 1246)

OZEN SOUND DEVICES v. THE UNITED STATES, No. 79-37

1. CLASSIFICATION OF IMPORTS—PARTS OF TOYS—TSUS ITEM 737.95

Judgment of U.S. Customs Court in *Ozen Sound Devices v. United States*, 83 Cust. Ct. —, C.D. 4816, 476 F. Supp. 1078 (1979), which upheld classification of imported merchandise under item 737.95, Tariff Schedules of the United States, as parts of toys, not specifically provided for, is affirmed.

2. ID.—COMMON MEANING OF TERM

To determine whether an article is more than an article included in a particular tariff provision, it is necessary to ascertain common meaning of the term in the provision and to compare it with involved merchandise.

3. ID.

Meaning of term in a tariff provision, when not otherwise defined in TSUS or indicated by legislative history, is common meaning understood in trade and commerce; and court may consult dictionaries, scientific authorities, and other reliable sources of information in ascertaining common meaning.

4. ID.

Practice of considering records to be parts of phonographs was not continued after 1962 enactment of TSUS.

5. ID.—“MORE THAN”

Each case dealing with “more than” issue must be decided on its own facts.

6. ID.—SPECIFIC PROVISION

Item 737.95 has requirements more difficult to satisfy than item 688.40 and is more specific provision.

U.S. Court of Customs and Patent Appeals, May 1, 1980

Appeal from U.S. Customs Court, C.D. 4816

[Affirmed.]

Robert B. Silverman, attorney of record for appellant, *Murray Sklaroff*, of counsel.

Alice Daniel, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation, *Saul Davis*, of counsel.

[Oral argument on April 10, 1980 by Robert B. Silverman, for appellant and by Saul Davis, for appellee.]

Before MARKEY, Chief Judge, RICH, BALDWIN, and MILLER, Associate Judges, and FORD,¹ Judge.

MILLER, Judge.

This is an appeal from the [1] judgment of the U.S. Customs Court in *Ozen Sound Devices v. United States*, 83 Cust. Ct. —, C.D. 4816, 476 F. Supp. 1078 (1979), which upheld the classification of the imported merchandise under item 737.95 of the Tariff Schedules of the United States (TSUS) as parts of toys, not specifically provided for. We affirm.

BACKGROUND

The imported merchandise is a talking mechanism inserted into dolls or other objects to reproduce prerecorded sayings. It includes a turntable, spindle, tone arm assembly, stylus, loudspeaker cone, and a record which is permanently affixed by cement to the turntable and cannot be removed without destroying the article. It is the same

¹ Hon. Morgan Ford, U.S. Customs Court, sitting by designation.

as the merchandise involved in *Mattel, Inc. v. United States*, 76 Cust. Ct. 84, C.D. 4639 (1976), except that it is driven by a battery-operated, switch-activated, electric motor, whereas the talking mechanism in *Mattel* was driven by a clock spring and string combination.

Instead of classification under item 737.95,² as parts of toys, not specifically provided for, appellant claims that the merchandise is more properly classifiable under item 685.32,³ as a phonograph, or under item 688.40,⁴ as electrical parts of articles, not specifically provided for.

In the Customs Court, appellant moved for judgment on the pleadings, and the Government moved for summary judgment. The court, in granting the Government's motion, stated that, in enacting the Tariff Schedules in 1962, Congress manifested a clear intent to discontinue the prior practice of treating records as parts of phonographs by providing for phonographs and their parts in schedule 6, part 5, item 685.32, while providing for phonograph records in schedule 7, part 2, item 724.25. The court said that classification of appellant's talking mechanism as a phonograph would frustrate that intent. It concluded that the talking mechanism, due to the presence of the essential record portion, is more than or other than the phonographs provided for in item 685.32 and not properly classifiable under that item. The court further concluded that appellant's alternative claim under item 688.40 is not proper, because this court had specifically held that item 737.90⁵ (the predecessor to item 737.95 for parts of toys) is more specific than item 688.40. *Ideal Toy Corp. v. United States*, 58 CCPA 9, C.A.D. 996, 433 F. 2d 801 (1970).

OPINION

[2] To determine whether an article is more than an article included in a particular tariff provision, it is necessary to ascertain the common meaning of the term in the provision and to compare it with the involved merchandise. *E. Green & Son (New York), Inc. v. United States*, 59 CCPA 31, C.A.D. 1032, 450 F. 2d 1396 (1971). [3] The meaning of a term in a tariff provision, when not otherwise defined in the TSUS or indicated by the legislative history, is the common meaning understood in trade and commerce; and the court may consult dictionaries, scientific authorities and other reliable sources of infor-

² Schedule 7, part 5, subpart E, item 737.95 provides:
Toys, and parts of toys, not specifically provided for:

737.95	Other.....	17.5% ad val.
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³ Schedule 6, part 5, item 685.32 provides:		
685.32	Record players, phonographs, record changers, turntables, and tone arms, and parts of the foregoing.....	5.5% ad val.

⁴ Schedule 6, part 5, item 688.40 provides:		
688.40	Electrical articles, and electrical parts of articles, not specifically provided for.....	5.5% ad val.

⁵ On Jan. 1, 1970, item 737.90 was renumbered as item 737.95. T.D. 75-304. Otherwise, the two items are identical.

mation in ascertaining the common meaning. *Schott Optical Glass, Inc. v. United States*, 67 CCPA —, C.A.D. 1239, 612 F. 2d 1283 (1979).

Appellant has cited the following dictionary definitions of "phonograph":

An instrument for recording, for reproducing, or for recording and reproducing sounds by the transmission of the vibrations of a stylus connected with a diaphragm and in contact with a groove in a record blank or record that is rotated steadily by the action of a spring or by an electric motor. ["Webster's New International Dictionary of the English Language" (1958).]

[A]n instrument for reproducing sounds by means of the vibration of a stylus or needle following a spiral groove on a revolving circular disc or cylinder. "Webster's Third New International Dictionary of the English Language" (1971)].⁶

Appellant argues that a record is an essential component in each of the above definitions and that, accordingly, the talking mechanism meets the definition of phonograph. However, the definitions indicate that a phonograph is an instrument which can produce sounds and that the instrument does not include a record, but merely responds to the action of a record.

Other un rebutted evidence also supports this view. It establishes that complete phonographs, as the term is used commercially, are sold to the public without records and are known as phonographs without the presence of records; and that articles containing both a phonograph instrument and a record element are not sold as phonographs to the public.

Therefore, we conclude that appellant's talking mechanism does not come within the common meaning of phonograph.

We further conclude that the addition of the record to appellant's talking mechanism is of such significance that the talking mechanism cannot be classified under item 685.32.⁷ See *The Englishtown Corp. v. United States*, 64 CCPA 84, 87, C.A.D. 1187, 553 F. 2d 1258, 1260 (1977). Cf. *Robert Bosch Corp. v. United States*, 63 Cust. Ct. 96, 103, C.D. 3881 (1969), citing *Hirsch & Co. v. United States*, 4 Ct. Cust. Appls. 82, T.D. 33365 (1913).

With respect to appellant's claim that the talking mechanism should be classified under item 688.40 because that item is more specific than

⁶ These definitions were cited in the *Mattel* case, *supra* at 88.

⁷ [4] Although, as appellant argues, records were considered to be parts of phonographs at an earlier time (see e.g., *Landay Bros. v. United States*, 5 Ct. Cust. Appls. 498, T.D. 35151 (1915)), this practice was not continued after the 1962 enactment of TSUS. Appellant also invites our attention to *Decorated Metal Mfg. Co. v. United States*, 12 Ct. Cust. Appls. 140, T.D. 40061 (1924) (typewriter ribbon spools held to be parts of typewriters). However, [5] each case dealing with a "more than" issue must be decided on its own facts. *E. Green & Son (New York), Inc. v. United States*, *supra* at 34, 450 F. 2d at 1398.

item 737.95,⁸ item 737.95 requires that the article belong to a class which possesses a use for amusement of children or adults throughout the United States that predominates over all other uses;⁹ whereas, item 688.40 requires only that the article have electrical characteristics. Accordingly, we are persuaded that [6] item 737.95 has requirements more difficult to satisfy than item 688.40 and is, therefore, the more specific provision. *United States v. Simon Saw & Steel Co.*, 51 CCPA 33, C.A.D. 834 (1964).¹⁰

In view of the foregoing, the judgment of the Customs Court is affirmed.

⁸ Appellant cites general interpretative rule 10(c), which provides, in relevant part, as follows: " * * * an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it * * * ."

⁹ See Schedule 7, part 5, subpart E, headnote 2.

¹⁰ For a different reason, this court, in *Ideal Toy Corp. v. United States*, 58 CCPA 9, 13, C.A.D. 966, 433 F. 2d 801, 804 (1970), affirmed a Customs Court determination that item 737.90 (the predecessor to item 737.95) prevailed over item 688.40.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Abstracts *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, April 28, 1980.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/60	Richardson, J. April 22, 1980	Alltransport, Inc.	77-8-01938	Item 708.89 22.5%	Item 708.89 22.5%	Item 708.89 15%	Item 708.89 15%	Wild Heerbrugg Instru- ments, Inc. v. U.S. (C.D. 4767)	New York Microscopy phototubes
P80/61	Richardson, J. April 22, 1980	Alltransport, Inc.	77-11-04673	Item 708.89 22.5%	Item 708.89 22.5%	Item 708.89 15%	Item 708.89 15%	Wild Heerbrugg Instru- ments, Inc. v. U.S. (C.D. 4767)	New York Microscopy phototubes
P80/62	Richardson, J. April 22, 1980	Wild Heerbrugg Instru- ments, Inc.	77-11-04676	Item 708.89 22.5%	Item 708.89 22.5%	Item 708.89 15%	Item 708.89 15%	Wild Heerbrugg Instru- ments, Inc. v. U.S. (C.D. 4767)	New York Microscopy phototubes

Decisions of the United States Customs Court

Abstracts *Abstracted Reappraisement Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/116	Re, C. J. April 25, 1980	Baytex, Division of Baychem	74-9-02537	Export value	Invoice unit value (\$0.6707 per pound), packed	C.B.S. Imports Corp. v. U.S. (C.D. 4780)	Charleston Perlon (all nylon) staple fiber, non crimp set
R80/117	Watson, J. April 25, 1980	Consolidated Sewing Machine Corp.	R60/3565, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Los Angeles Sewing machines
R80/118	Watson, J. April 25, 1980	Consolidated Sewing Machine Corp.	R61/65565, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and ap- praised values	Agreed statement of facts	New York Sewing machines
R80/119	Watson, J. April 25, 1980	Consolidated Merch. Corp.	R64/14652, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and ap- praised values	Agreed statement of facts	Miami Sewing machines

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/120	Watson, J. April 25, 1980	J. C. Penney Co.	R60/17206, etc.	Export value	\$13,209 ea. (radios with leather cases); 194 ea. (batteries); 506 ea. (earphone and cases)	Agreed statement of facts	Seattle Radios with leather cases; batteries; earphone and cases
R80/121	Watson, J. April 25, 1980	J. C. Penney	R60/22358	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Tubing mats
R80/122	Watson, J. April 25, 1980	J. C. Penney	R64/12818, etc.	Export value	Appraised unit values less 7.5% net packed	Agreed statement of facts	Baltimore Tubing mats
R80/123	Watson, J. April 25, 1980	J. C. Penney	R64/14502, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Tubing mats
R80/124	Watson, J. April 25, 1980	J. C. Penney	R64/17900, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Tubing mats
R80/125	Watson, J. April 25, 1980	Wheeler & Miller, s/c Fleetwood Industries	R59/8186, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Sewing machine heads

R80/128	Newman, J. April 25, 1980	Gebrig, Hoban & Co., Inc.	R89/18085, etc.	United States value	Determined by adding f.o.b. unit invoice price in Swiss francs converted to a dollar value at rate of ex- change in effect at time of entry (the "claimed value"), 58% of difference between the claimed value and appraised value	Agreed statement of facts	New York Machine tools and accessories and parts
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Appeal to U.S. Court of Customs and Patent Appeals

APPEAL 80-28.—The Ferriswheel *v.* United States.—SCOTTISH HIGHLAND JACKETS AND KILTS—GARMENTS (WOOL AND COTTON) WITH FRINGE, EPAULETS OR BRAID—MEN'S WEARING APPAREL, ORNAMENTED—MEN'S WEARING APPAREL, NOT ORNAMENTED—TSUS. Appeal from C.D. 4844.

In this case two men's kilts and an Argyll jacket of wool were assessed with duty at the rate of 42.5 percent ad valorem under the provision in item 380.02, Tariff Schedules of the United States, for men's wearing apparel, ornamented, of wool. A Sheriffmuir jacket made from cotton was assessed with duty at the rate of 35 percent under the provision in item 380.00, as modified by T.D. 68-9, for men's wearing apparel, ornamented, of cotton. Plaintiff-appellant contended that the wool garments were dutiable at 37.5 cents per pound plus 21 percent under item 380.66 and that the cotton jacket was dutiable at 8 percent under item 380.12, as modified by T.D. 68-9, as men's wearing apparel, not ornamented.

The Customs Court found that plaintiff had abandoned its claim as to the wool Argyll jacket and sustained the classification under item 380.02. As to the kilts and the Sheriffmuir jacket, the court determined they were properly classified under items 380.02 and 380.00, respectively. The action was dismissed.

It is claimed that the Customs Court erred in "sustaining the U.S. Customs Service classification of men's kilts under TSUS 380.2070, Argyll jackets under TSUS 380.0245 and Sheriffmuir doublets under TSUS 380.0046, and in failing to classify the aforesaid garments under TSUS 380.6605, 380.6690, and 380.1290, respectively"; in failing to find and hold that the fringe on a man's kilt is functional and is not, therefore, ornamentation for tariff purposes; in failing to find and rule that the epaulets in Argyll jackets and Sheriffmuir doublets are functional and are, therefore, not ornamentation for tariff purposes; in failing to find and rule that the fringe on men's kilts, the epaulets on Argyll jackets and Sheriffmuir doublets and the three strips of braid on the cuffs and pocket flaps of Argyll jackets and Sheriffmuir doublets are all traditional features and are, therefore, not ornamentation for tariff purposes.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through December 21, 1979, are available in microfiche format at a cost of \$17.70 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: May 6, 1980.

JOHN T. ROTH,
*Acting Director,
Regulations and Research Division.*

Date of decision	File No.	Issue
3-12-80	104428	Aircraft: Outward general declaration serving as foreign clearance for scheduled cargo aircraft intending to land bunkers or effect crew changes prior to departing foreign
4-10-80	711802	Entry: Whether district director's proposal to raise informal entry limit in Virgin Islands is precluded by law
4-10-80	712217	Prohibited and restricted importations: Copyright infringement: Seizure and detention of watches
4-10-80	712789	Prohibited and restricted importations: Trademark infringement: Shoe design
4- 1-80	055442	Classification: Whether a play figure is a toy figure of an animate object (737.40, 737.95)
3- 5-80	060943	Classification: Live water buffalo (100.95)
3-28-80	061131	Classification: Address book fillers (256.30, 256.56, 256.58, 256.90)
3-31-80	061258	Classification: Cassettes with tabs out (678.50, 685.40, 774.60)
3-28-80	061472	Classification: Leather athletic shoes (700.35, 700.85)
3-28-80	061580	American selling price: Slip-on women's work shoe (700.60)
3-12-80	061593	Classification: Pipe-forming machine (664.08, 666.00, 678.50)
3-31-80	061653	Classification: Women's plastic boots of molded construction (700.53)
3-28-80	061755	Classification: Space helmet walkie-talkie (685.26, 737.95)
4- 8-80	061772	American selling price: Women's open-toe, open-back, ankle-strap casual shoe (700.60)
4- 1-80	061827	American selling price: Women's closed-toe, closed-back, ankle-strap casual shoe (700.60)
3-31-80	061849	American selling price: Child's protective boot (700.60)
4- 1-80	061852	American selling price: Child's closed-toe, closed-back, ankle-strap casual shoe (700.60)
4- 1-80	061941	Classification: Tricycle horn (732.52, 774.55)
3-28-80	062834	Classification: Air preheaters (660.15, 661.68)
4- 8-80	062891	Classification: Motorized carts (666.00, 692.02, 692.10)
4- 1-80	062982	Classification: Safety vests and life jackets (770.80)
3-31-80	062999	Classification: Nonmetallic valves and fittings (680.19, 680.27, 774.55)
4-10-80	063677	Classification: Slot ventilators; U-valve meters (657.25, 682.95, 712.49)
4- 9-80	064109	Classification: Pullovers (378.05, 378.10, 378.15, 378.35)
4- 1-80	064120	Classification: Dental light arm assembly (653.39)
3-31-80	064185	Classification: Animal characters of soft yarn material (737.22, 737.40)
4- 4-80	064193	Classification: Stickers (774.55, 790.55)
4- 1-80	064194	Classification: Wooden basket handle (204.05, 204.27, 207.00)

Date of decision	File No.	Issue
3-28-80	064196	Classification: Snowmobile boot (700.58, 700.60, 700.80)
4- 4-80	064279	Classification: Gloves (705.30, 705.35, 705.72, 705.73, 705.74, 735.06)
4-1-80	064306	Classification: Coated peanuts (157.10)
4-9-80	064385	Classification: Bumper cars (678.50, 790.39)
3-31-80	064479	Classification: Plastic shopping bags (774.55)
3-28-80	064505	Classification: Hat of goose down (703.75)
4- 4-80	064524	Classification: Knit halter top and shorts (382.06, 382.78)
4- 9-80	064529	Classification: Iodine disinfectant (439.50)

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN AIRTIGHT, CAST-IRON STOVES	} Investigation No. 337-TA-69
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Notice of Termination

Upon consideration of the presiding officer's recommendation and the record in this proceeding, the Commission is ordering the termination of investigation No. 337-TA-69, Certain Airtight Cast-Iron Stoves, as to respondent Gambles Import Corp., by granting motion No. 69-20 by Gambles. The motion to terminate was unopposed by the Commission investigative attorney and by the complainants.

The order is effective as of April 25, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission order. Such petitions must be in accord with Commission rule 210.56 (19 CFR 210.56).

Copies of the Commission's action and order, the Commissioners' opinion(s), and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Notice of the institution of this investigation was published in the Federal Register of July 12, 1979 (44 F.R. 40732).

By order of the Commission.

Issued: April 25, 1980.

KENNETH R. MASON,
Secretary.

Index

U.S. Customs Service

Treasury decisions:	T.D. No.
Bonds: For the control of instruments of international traffic	80-121
Customhouse broker license—suspension	80-120
Reimbursable services—excess cost of preclearance operation	80-119
Synopses of drawback decisions	80-122
Polyterpene resins	80-122-A
Concertina, barbed tape	80-122-B
Candy products	80-122-C
Bindings, finished and combined finished upper materials	80-122-D
PTFE rods, sheets, tapes, tubes	80-122-E
Piece goods, bleached, dyed, and/or printed	80-122-F
Steel in plate or shapes	80-122-G
Gear frames, automotive	80-122-H
Computer systems, computer subsystems	80-122-I
Aviation antiknock, motor mix antiknock	80-122-J
2-methyl-6-ethyl aniline (MEA)	80-122-K
Refrigeration, heating, and air-conditioning systems	80-122-L
Piece goods, bleached and/or dyed and/or mercerized	80-122-M
Cranes, lattice boom, hydraulic cranes	80-122-N
Lubricant additives	80-122-O
Confectionery items	80-122-P
Beverages, canned and bottled, carbonated and noncarbonated	80-122-Q
Detergents, synthetic	80-122-R
Ferrovanadium carbide nitrogen	80-122-S
Molybdc oxide	80-122-T
Piece goods, bleached, mercerized, finished, dyed	80-122-U
Grapefruit juice, canned	80-122-V
Beverages, still and carbonated	80-122-W
Stainless steel tanks	80-122-X
Piece goods	80-122-Y
Orange juice from concentrate	80-122-Z

Court of Customs and Patent Appeals

	C.A.D. No.
<i>General Electric Company v. The United States</i>	1245
<i>Ozen Sound Devices v. The United States</i>	1246

Customs Court

Appeal to U.S. Court of Customs and Patent Appeals (p.—):

Appeal 80-28—Scottish Highland jackets and kilts; garments (wool and cotton) with fringe, epaulets or braid; men's wearing apparel, ornamented; men's wearing apparel, not ornamented; TSUS



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